GOVERNMENT OF MALAYSIA

v.

TAN HAM MAH

HIGH COURT BORNEO, MIRI
GEORGE SEAH J
[SUIT NO. MR. 61 OF 1981]
15 JUNE 1982

CIVIL PROCEDURE: *Application to strike off defence and for leave to sign final judgement - Frivolous, vexatious or to delay the fair trial - Whether defence shows triable issue to the claim.*

This is an application by the plaintiff which sought an order to strike off the defence filed herein as it was frivolous, vexatious or to delay the fair trial of the action and for leave to sign final judgment against the defendant. This application was however opposed by the defendant.

Held:
As the defence shows a tribal issue to the claim of the plaintiff, the application for summary judgment is refused with costs to the defendant.

[Application for Summary Judgment refused with costs at RM50 to the defendant.]

Case referred to:
Harry Tong Lee Hwa v. Yong Kah Chin [1979] PC APP 23

Legislation referred to:
Real Property Gains Tax Act 1976, s. 2(1)
Rules of the High Court 1980, O. 14 r. 1, O. 18 r. 19

For the plaintiff - Chen Hua Ling standing in for S.F.C.; Suriayadi bin Halim Omar
For the defendant - Peter Lin

JUDGMENT

George Seah J:

This is an application by the Government of Malaysia under O. 14 r. 1 and O. 18 r. 19 of the Rules of the High Court 1980 for an order that (a) the defence filed herein dated 24 July 1981 be struck out on the grounds that it is frivolous, vexatious or delaying the fair trial of the action and (b) leave be given to sign final judgment against the said defendant. The application is supported by an affidavit dated 18 September 1981, but it is opposed by an affidavit sworn by Mr. Lim Kuan Yuh, Counsel for the defendant dated 4 May 1982.

The relevant facts appear to be these:

a) The defendant is the registered owner of a shophouse standing on Lot 13 Miri Concession Land District (hereinafter referred to as the shophouse).

b) On 22 July 1975 the defendant subleased the whole of the shophouse to one Sng Chee Hua for a period of nine years from 1 August 1975 to 31 July 1984 and the said sublease was duly registered at the Miri Land Registry office as Instrument No. L.1298/1975.

c) On 1 November 1976 the defendant and his sublessee executed a memorandum of surrender of sublease transferring to the defendant the said shophouse for the residue now to come and unexpired created by memorandum of sublease Instrument No. L.1298/75 in consideration of a sum of RM87,000 paid by the defendant to his sublessee Sng Chee Hua. The memorandum of surrender of sublease was registered as Instrument No. L.164/1977.

Asset includes an interest or right in or over an asset (see s. 2(1) of the Real Property Gains Tax Act 1976) and by virtue of memorandum of sublease vide Instrument No. L.1298/75 the sub-lessee Sng Chee Hua shall be deemed to have acquired a right or interest in the shophouse described as Lot 13 Miri Concession Land District. For the purpose of the RPGTA 1976 this sublease shall be deemed a chargeable asset.

It is the contention of the Senior Federal Counsel that by executing the memorandum of surrender of sublease for a consideration of a sum of RM87,000 paid by the defendant the sub-lessee Sng Chee Hua had in actual fact disposed of the chargeable asset to the defendant. The definition of "dispose" in s. 2(1) of the Act means sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law. Even though the parties executed a memorandum of surrender of sublease it is submitted that it amounted to a transfer of the remaining period of the sublease by Sng Chee Hua to the defendant.

For the defendant it is argued that since the definition of the word "dispose" does not include surrender it would be wrong to extend transfer to cover surrender.

As stated by Sir John Megaw in *Harry Tong Lee Hwa v. Yong Kah Chin* [1979] PC APP 23 the sole question at each stage of these proceedings was: Does the appellant, the defendant in the action, show a triable issue by way of defence to the claim of the respondent, the plaintiff in the action? The answer to this question is in the affirmative. For this reason, the application for summary judgment is refused with costs to the defendant which I will fix at RM50.

Also found at [1982] CLJ 504